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VEDDER PRICE KAUFMAN & KAMMHOLZ  
222 N. LASALLE STREET  
CHICAGO, IL 60601

EXAMINER
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AFSHAR, KAMRAN

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/692,622

Applicant(s)

VOGEDES ET AL.

Examiner

Kamran Afshar, 571-272-7796

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-8 & 14-24 is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-13 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments with respect to newly added claim 25 has been considered but are moot in view of the new ground(s) of rejection.

2. Applicant's arguments filed on 07/18/2007 have been fully considered but they are not persuasive.

3. In response to applicant's arguments, the recitation "sender controllable modalities" (See Page 10, Line 12) has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

4. In response to applicant's argument arguments that "the sender controllable modalities allow, for example, a sender to control the user's device (emphases added). For example, if a user were to set a particular modality for an incoming call (emphases added), a sender such as the user's boss (e.g., boss' device) can send a priority message to the receiving device to instead control the user's device (emphases added). As such, a sender device controls the operation of a user's device using priority commands that include a modality alert command" (emphases added) (See Page 10, Lines 15-20), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the sender controllable modalities allow, for example, a sender to control the user's device (emphases added). For example, if a user were to set a particular modality for an incoming call (emphases added), a sender such as

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the user's boss (e.g., boss' device) can send a priority message to the receiving device to instead control the user's device (emphases added). As such, a sender device controls the operation of a user's device using priority commands that include a modality alert command" (emphases added) (See Page 10, Lines 15-20) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. Further, in response to applicant's argument that the Yasuhior reference fail to show certain features of applicant's invention. Applicant is kindly directed Yasuhior reference that discloses a transmitter and receiver part with is capable transmitting and receiving the priority message (See Yasuhior e.g. device 51, 57, 58 of Fig. 11, 58, 59 generating of Fig. 12, also see Lines 9-11 of ¶ [0032]). Applicant is, further, directed to Bleile reference that overcomes those feature(s). (See Bleile e.g. similar electronic instrument / apparatus i.e. WCA, Co. 5, Lines 18-21, Co. 6, Lines 23-30) a communication command generator capable of generating the communication command (See Bleile e.g. a message, transmitter, message generator, Co. 5, Lines 21-23, 12, 16, of Fig. 1); and a transmitter operably coupled to the priority command generator and the communication command generator such that the priority command and the communication command are transmitted (See Bleile e.g. Co. 3, Lines 37-45) to a recipient device (See Bleile e.g. 56, 52 of Fig. 2). Therefore, the previous rejection is maintained. which is repeated below. For the applicant convenient the previous rejection is repeated below and also an official English translation of Yasuhior reference is provided.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momose Yasuhior (JP 11-046377 A, herein after Yasuhior) in view of Bleile (U.S. Patent 7,162,228 B2).

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With respect to claims 1, 9, Yasuhior discloses an apparatus (See Yasuhior e.g. electronic instrument, apparatus, etc., Page 3, ¶ [0016]) for sender controllable modalities (See Yasuhior e.g. a notification controller decides the modality of the notification output based on the priority of a notification factor and the priority of a user's content of action. Unit (24) identifies a user's content of action when the notification factor occurs. The priority of a notification demand output by a notification demand generator (26) to a notification output unit (28), is obtained corresponding to a notification schedule file (30). A factor identification unit (27) performs the identification of the notification factor having occurred (See Yasuhior e.g. Abstract of Pages 1A-2A), the apparatus comprising: a priority command generator (See Yasuhior e.g. generator 26, Page 3, ¶ [0016]) capable of generating a priority command that indicates a level of priority (See Yasuhior e.g. class of flashing loudspeaker, different messages, a vibration, a predetermined ring tone, one or more beeps, one or more flashing lights, user selectable preferences or setting, etc., Page 3, ¶ [0018]) as related to a communication command and that includes a modality alert command (See Yasuhior e.g. Abstract of Pages 1A-2A, setting priorities for example: priority "-2", "0", "1", "2", etc., Page 3-4, ¶ [0018]). However, Yasuhior does not explicitly disclose that a communication command generator capable of generating the communication command; and a transmitter operably coupled to the priority command generator and the communication command generator such that the priority command and the communication command are transmitted to a recipient device. In an analogous field of endeavor, Bleile discloses the concept of (See Bleile e.g. similar electronic instrument / apparatus i.e. WCA, Co. 5, Lines 18-21, Co. 6, Lines 23-30) a communication command generator capable of generating the communication command (See Bleile e.g. a message, transmitter, message generator, Co. 5, Lines 21-23, 12, 16, of Fig. 1); and a transmitter operably coupled to the priority command generator and the communication command generator such that the priority command and the communication command are transmitted (See Bleile e.g. Co. 3, Lines 37-45) to a recipient device (See Bleile e.g. 56, 52 of Fig. 2). Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to provide above teaching of Bleile to Yasuhior providing an apparatus comprising a message generator operable to produce a message which is coupled to a transmitter for transmitting the message to a wireless communication appliance as suggested (See Bleile, Co. 3, Lines 11-19).

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Regarding claim 2, it is obvious that an input device operably coupled to the communication command generator such that the communication command generator generates the communication command in response to an input communication command (See Bleile e.g. 22, 26 of Fig. 1, Yasuhior, 21, 28 of Fig. 3, input, output, Page3, ¶ [0016]).

Regarding claim 3, it is obvious that the input device operable coupled to the priority command generator such that the priority command generator generates the modality alert command (See Yasuhior e.g. Abstract of Pages 1A-2A, setting priorities for example: priority "-2","0", "1","2", etc., Page 3-4, ¶ [0018]) in response to an input priority command (See Yasuhior e.g. 21, 28 of Fig. 3, input, output, Page3, ¶ [0016]).

Regarding claim 4, Yasuhior discloses the modality alert command includes instructions such that an alert is at least one of the following: a vibration, a predetermined ring tone, one or more beeps, one or more flashing lights, a wake-up command and a defined output multi-modal output modality setting (See Yasuhior e.g. class of flashing loudspeaker, different messages, a vibration, a predetermined ring tone, one or more beeps, one or more flashing lights, user selectable preferences or setting, etc., Page 3, ¶ [0018]).

Regarding claim 10, it is obvious that prior to generating the communication command, receiving a proximity indicator (See Bleile e.g. Bluetooth communication link, Co. 6, Lines 36-40) indication a location of the recipient device (See Bleile e.g. text message, SMS message, GSM message, Co. 11, Line 58 – Co. 12, Line 11).

Regarding claim 11, Yasuhior discloses the modality alert command includes at least one of the following: a vibratory alert, a ring-tone, a wake-up command, a text-based alert, an illumination alert and a defined output multi-modal output modality setting (See Yasuhior e.g. class of flashing loudspeaker, different messages, a vibration, a predetermined ring tone, one or more beeps, one or more flashing lights, user selectable preferences or setting, etc., Page 3, ¶ [0018]).

Regarding claim 12, it is obvious that the communication command may be at least one of the following: a caller identification, a text message, an auditory message and a visual message See Yasuhior e.g. class of flashing loudspeaker, different messages, a vibration, a predetermined ring tone,

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one or more beeps, one or more flashing lights, user selectable preferences or setting, etc., Page 3, ¶ [0018], Bleile e.g. text message, SMS message, GSM message, Co. 11, Line 58 – Co. 12, Line 11).

Regarding claim 13, It is obvious that discloses the step of transmitting the communication command and the priority command to the recipient device further includes transmitting the communication command and the priority command (See Yasuhior e.g. Abstract of Pages 1A-2A, setting priorities for example: priority "-2", "0", "1", "2", etc., Page 3-4, ¶ [0018]) to an intermediate server prior to the communication command and the priority command being transmitted to the recipient device (See Bleile e.g. text message, SMS message, GSM message, Co. 11, Line 58 – Co. 12, Line 11).

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yasuhior, Bleile and further in view of Cronin (U.S. Patent 6,999,731 B2).

Regarding claim 25, Yasuhior, Bleile teach everything as discussed above in the rejected claims 1, 9. However, Yasuhior, Bleile are silent that the modality alert command adjusts the modality of a notification system within a receiving device. In an analogous field of endeavor, Cronin also teaches the concept of the sender (or the first device) generating command (See Cronin e.g. Co. 3, Lines 36-37) and transmitted to (or communicated to) the (See Cornin e.g. Co. 2, Lines 52-53) receiving device or (second device) (See Cronin e.g. Co. Lines 1 and, sender or first device, receiving device or second device Co. 2, Lines 36-40). Further, Cornin teaches the modality alert command (See Cornin e.g. Co. multi-modal alert mechanism in response to the command received at the second device, Co. 3, Lines 58-64) adjusts the modality of a notification system within a receiving device (See Cornin e.g. enabling or disabling the alert mechanism in response to the received command at the second device, Co. 3, Lines 64-66). Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to provide above teaching of Cornin to Bleile and Yasuhior providing a system or a method to enable, disable, or modify a setting of the alert mechanism of the second device as suggested (See Cornin e.g. Co. 3, Lines 42-43).

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***Allowable Subject Matter***

10. Claims 5-8 and 14-24 are allowed.
11. The following is a statement of reasons for the indication of allowable subject matter: 5-8 & 14-24.  
Claims 5-8 and 14-24 are allowed for the reasons as set forth in the previous action mailed 11/01/2006 and or 04/19/2007.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kamran Afshar whose telephone number is (571) 272-7796. The examiner can be reached on Monday-Friday.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, **Eng, George** can be reached @ (571) 272-3984. The fax number for the organization where this application or proceeding is assigned is **571-273-8300** for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from



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either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Kamran Afshar**



**GEORGE ENG**  
SUPERVISORY PATENT EXAMINER